

IN THE HIGH COURT OF DELHI

FAO No.180/2006

Mr.Rama Shankar Sharma Appellant
! through: Mr.S.P.Singh and Mr.R.K.Relan, Adv.

VERSUS

\$ Union of India Respondent
^ through: Mr.S.R.Narayan, Adv.

RESERVED ON: 13.11.2007

% DATE OF DECISION: 15.11.2007

CORAM:

*** Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. This appeal is directed against the judgment dated 24.04.06 of the Railway Claims Tribunal, Principal Bench, Delhi dismissing the claim application of the appellant.
2. Appellant had filed a claim application under Section 124-A of the Railways Act, 1989 claiming compensation in sum of Rs.10 lakhs on account of the injuries sustained by him in a train accident.
3. It was averred in the claim application that on 22.3.00 at about 2.15 p.m. the appellant had boarded Sachkhand Express from platform no.6, New Delhi Railway Station, Delhi for a journey from New Delhi to Panipat. That the appellant was washing his face

at the wash basin near the gate of the compartment when the train halted at Sadar Bazaar Railway Station at Delhi and he was in the process of washing his face the train suddenly started with a jolt as a result of which he accidentally fell from the train on the track. That because of the fall, the appellant sustained injuries and was removed to Ram Manohar Lohia Hospital, Delhi. That as a result of the injuries, right leg of the appellant was amputated.

4. The railway defended by pleading that the appellant is not entitled to any compensation as the injury sustained by him was not accidental. That the appellant was not a bona fide passenger in the train and that the appellant was responsible for what had happened. That he tried to board the train when it was in motion and had gathered momentum, in the process he fell down on the track and suffered the injury.

5. In support of the claim the appellant examined himself as AW-1 and one Mr.Durgesh Kumar as AW-2 who claimed to be an eyewitness to the purchase of the ticket by the appellant and was a co-passenger in the train.

6. Durgesh Kumar in his testimony as AW-2 had deposed that :-

- i. He knew appellant as they belong to the same village.
- ii. On 22.3.00 at about 7.00 A.M. he met appellant at the Achner Railway Station.
- iii. Both of them were going to Panipat.
- iv. From Achner Railway Station they boarded a train for Mathura and from Mathura boarded a train for Delhi.

- v. At New Delhi Railway Station, they bought tickets of the train Sachkhand Express and boarded the train at about 2.15 p.m.
 - vi. The train halted at Sadar Bazaar Station and the appellant went to the lavatory.
 - vii. The train started suddenly with a jolt.
 - viii. When the appellant did not return, he got anxious and went to the gate and learnt that the appellant had accidentally fallen from the train when the train had started suddenly with a jolt.
 - ix. On learning about the accident, he pulled the chain of the train.
 - x. After receiving assurance from the Railway Police Personnel that they will take the appellant to the hospital, he again boarded the train and left for Panipat.
7. However, in his cross-examination, Durgesh Kumar, AW-2 contradicted himself by deposing as under :-

“Rama Shankar Sharma had boarded Sachkhand Express train at New Delhi station. After alighting from the train at New Delhi station, I had proceeded to my home. It is incorrect to suggest that I have given a false affidavit”

8. In support of its stand, the Railway examined Govind Singh, Head Constable as DW-1. The said witness was posted at the concerned police station on the date of the accident and had investigated the accident. He deposed that DD entry, Ex.AW1/2 was prepared by him on the basis of the statement of the appellant recorded at the time when the appellant was removed to Ram

Manohar Hospital immediately after the accident. The said statement is Ex.DW2/1 wherein the appellant had stated that the accident had occurred when he was trying to board the running train. He also proved search memo (fard jamatalashi), Ex.DW1/4 which records that an old Airbag was found with the appellant.

9. It is also relevant to note that no ticket was found with the appellant.

10. Disbelieving the testimony of DW-2 and noting the DD Entry Ex.AW1/2, the Tribunal has held that the appellant was not a bona fide passenger as there is no evidence to establish that he had purchased the ticket and that the injury sustained by him was not accidental and thus dismissed the claim application of the appellant.

11. In support of the appeal, learned counsel for the appellant has urged following two grounds :-

- A. That merely because no ticket was found with the appellant, the Tribunal ought not to have come to the conclusion that the appellant was not a bona fide passenger particularly when the testimony of Durgesh Kumar, AW-2 had established that the appellant had bought the ticket.
- B. That the testimony of Govind Singh, DW-1 and DD Entry, Ex.AW1/2 contradicts the stand taken by the Railway in their written statement wherein it is submitted that the accident had occurred when the appellant was trying to alight from the running train.

12. Learned counsel for the appellant also placed reliance upon the following judgments :-

- i. Dasari Laxmi v Union of India AIR 2003 AP 56.
- ii. Gullipalli Lakshmikanthamma v General Manager, South Central Railway 2003 ACJ 1582 (AP)
- iii. Joji C. John v Union of India 2003 ACJ 52 (Ker).
- iv. Union of India v Uggina Srinivasa Rao and Ors 2003 ACJ 402.

13. It be noted that in cross-examination, AW-2, admitted having parted company with the appellant at New Delhi Railway Station.

14. Another circumstance, which discredits the testimony of AW-2, is his conduct of leaving the appellant in lurch even after witnessing that he is seriously injured. The ordinary human conduct would require that he would have accompanied appellant to the hospital who was a co-villager.

15. In view of the material contradiction in the testimony of DW-2 and his abnormal conduct, his testimony does not inspire any confidence.

16. Another evidence which belies the version of the appellant is the search memo (fard jamatalashi), Ex.Ex.DW1/4. The said search memo was prepared by Govind Singh, DW-1 at the time when the appellant was removed to the hospital immediately after the accident records that an old Airbag was found with the appellant. The fact that the luggage of the appellant was found with him even after the accident also points to the fact that the accident

in question occurred when he was trying to board the running train. Had appellant accidentally fallen from the train as averred by him, his luggage would have remained in the train and not found with him. It is highly improbable that the appellant was carrying the airbag at the time when he was washing his face and accidentally fell down from the train.

17. In light of the fact that the testimony of Durgesh Kumar, AW-2 suffers from material contradiction and other evidence viz. DD Entry, Ex.DW1/2, statement of the appellant, Ex.DW1/1 and search memo Ex.DW1/4, the view taken by the Tribunal that the appellant was not a passenger and that accident in question occurred when he was trying to board the running train is more probable.

18. In so far as contradiction between the written statement filed by the railways and the testimony of Govind Singh, DW-2 is concerned, I note that in para 4 of the written statement originally filed it was pleaded that the accident in question had occurred while the appellant was alighting from the running train. But an application for amendment of written statement was moved by the Railway on the plea that due to a typographical error, word 'boarding' has been written as 'alighting'. Vide order dated 16.7.03, the Tribunal allowed the application for amendment of the written statement filed by the Railways. Thus plea taken was that appellant fell while attempting to board a moving train.

19. In the Dasari Laxmi's case (supra), the deceased died when he was trying to board the train 'Vishaka Express'. His wife filed a claim application claiming compensation in sum of Rs.2 lakhs

in respect of death of the deceased. No ticket was found with the deceased. PW-2 claimed to be an eyewitness to the purchase of the ticket by the deceased. PW2 categorically stated that the deceased tendered Rs. 100/- note at the Railway Booking counter and as the booking clerk informed the deceased that he does not have the change; the deceased borrowed Rs. 20/- from PW2 and purchased the ticket. RW-2, who was the Assistant Station Master at the relevant point of time had deposed that the crowd told him that the injured was having a season ticket and when he wanted to see the said season ticket, the crowd had pressurized him to issue Memo informing that the injured was having professed bleeding. Therefore, he issued a Memo incorporating the said fact. The Tribunal based on the above version of RW2, rejected the claim of the claimant on the ground that the claimant failed to prove that the deceased was a passenger as defined in the Act. Appellate Court noted that RW-2 in his cross-examination denied the suggestion that he mentioned about the season ticket because of the pressure of the crowd and also deposed in the cross-examination that he could not recollect any particular face in the crowd and cannot identify any one. Appellate Court further noted that in the cross-examination of PW-2, not even a suggestion was made disputing his version that he advanced Rs. 20/- to the deceased for purchasing the ticket and the purchase of ticket by the deceased. Keeping in view the above circumstances, the appellate court held that the Tribunal was not justified in giving much

importance to the evidence of RW2 rather than the evidence of PW2 and allowed the appeal.

20. In Joji's case (supra), the appellant/injured had failed to produce the ticket before the Railway Claims Tribunal. Holding that the burden to prove that the appellant was not a bona fide passenger was on the Railways and that Railways failed to discharge the same, appellate court allowed the claim of the appellant.

21. In Union of India's case (supra), it was proved before the Claims Tribunal that the injured persons were in possession of valid tickets. The appellate court negated the contention advanced by the appellant that the person who is trying to board a train is not a passenger. (This case is clearly distinguishable as in this case the factum of purchase of valid ticket by the injured persons was duly proved while in the instant case it is not proved that the appellant had purchased a valid ticket).

22. In Gullipalli's case (supra), the Railways Claims Tribunal dismissed the claim of the appellant on the sole ground that no ticket was found with the appellant. Allowing the appeal of the appellant, the appellate court observed as under :-

“After considering the same, I am of the opinion that an inference can be drawn to the effect that the deceased is a bona fide passenger having regard to the realities and realistic and pragmatic approach of the question involved. It cannot invariably, be conceived or comprehended that always ticket should be traced. One has to imagine the circumstances that will prevail at the relevant time and whether keeping of the ticket should be given that much of importance at the crucial time when the deceased was suffering

from fatal injuries and died; the ticket could have been missing. So from the material on record it must be found that the deceased is a bona fide passenger.”

23. The afore-noted judgments cited by the learned counsel for the appellant is of no assistance as facts of the instant case are entirely different from the facts of the afore-noted judgments. The legal principle that can be culled out from the afore-noted judgments is that the onus is on the railways to prove that the claimant was not the bona fide passenger. In the instant case, evidence, particularly DD Entry, Ex.AW1/2 and statement of the appellant, Ex.DW1/2 and search memo, Ex.DW1/4 points to the fact that the deceased was not a bona fide passenger and that the accident occurred when he was trying to board the train which was in motion.

24. In view of the above discussion the appeal is held devoid of merits and is dismissed.

25. No costs.

November 15, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE